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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/616,599

07/10/2003

William P. Hnat

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08/20/2004

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EXAMINER

MILLER, TAKISHA S

ART UNIT

PAPER NUMBER

2855

DATE MAILED: 08/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/616,599

Applicant(s)

HNAT ET AL.

Examiner

Takisha Miller

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>10/14/03</u> | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-3,6,7,9-11,14,16 and 17 are rejected under 35 U.S.C. 102(e) as being anticipated by Brockway et al. (hereinafter Brockway).
 - a. With respect to claims 1,11,16 and 17, Brockway teaches a system (105) for measuring and remotely monitoring strain in an element comprising a sensor (305) for measuring strain in said element, producing an electrical signal representative thereof; a telemetry circuit (310) electrically coupled to said sensor (305) for encoding and transmitting the signal representative of strain; a reader module (140) remotely located from said sensor (305) and said telemetry circuit (310) for receiving the signal representative of strain (Figs. 1-3a)(Col. 9, lines 45-49) and a control module (200) in communication with said reader module (140) for storing and processing the signal representative of strain (Col. 7, line 58 – Col. 8, line 7).
 - b. With respect to claim 2, Brockway teaches a system for measuring and remotely monitoring strain in an element further comprising a housing (300) for encapsulating said sensor (305) and said telemetry circuit (310)(Fig.3a).

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- c. With respect to claims 3 and 14, Brockway teaches a system for measuring and remotely monitoring strain in an element wherein said housing (300) is comprised of bio-compatible material capable of implantation a living organism (Col.8, lines 15-16).
- d. With respect to claim 6, Brockway teaches a system for measuring and remotely monitoring strain in an element wherein said sensor (305) for measuring strain is a surface acoustic wave sensor (Col. 15, lines 1-4).
- e. With respect to claim 7, Brockway teaches a system for measuring and remotely monitoring strain in an element wherein said sensor (305) for measuring strain is a miniaturized strain gauge (Col. 9, lines 36-37).
- f. With respect to claims 9 and 10, Brockway teaches a system for measuring and remotely monitoring strain in an element wherein said reader module (140) further comprises a memory card for storing sensor data (Col. 7, lines 50-52).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 4,5,12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brockway et al. (6,409,674) in view of Ericson et al. (6,533,733)(hereinafter Ericson). Brockway teaches a system for measuring and remotely monitoring strain in an element comprising a sensor (305) but lacks teaching the sensor is a cantilever beam type capacitive sensor. Ericson teaches cantilever beam type sensors (Col. 6, lines 55-62). It would have been

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obvious to one of ordinary skill in the art to modify Brockway to include a cantilever beam type capacitive sensor as taught by Ericson in order to effectively measure strain/pressure using a variety of art equivalent sensing means which are readily available in the art (see Ericson; Col. 6, lines 55-62).

5. Claims 8 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brockway et al. (6,409,674) in view of Lebel et al. (hereinafter Lebel). Brockway teaches a system for measuring and remotely monitoring strain in an element comprising a housing (300) but lacks teaching the housing being substantially annular. Lebel teaches a housing (6) being substantially annular (Fig. 1a). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Brockway to include an annular housing as taught by Lebel in order to more favorably be implanted in various living organisms (see Lebel; Col. 20, lines 47-50).

Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Takisha Miller whose telephone number is (571) 272-2184. The examiner can normally be reached on Monday - Friday (7:00 am - 3:30 pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Edward Lefkowitz can be reached on (571) 272-2180. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


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